

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Maurice Shelton,
Petitioner

v.

Case No. C-1-01-431

Wanza Jackson,
Respondent

ORDER AFFIRMING REPORT AND RECOMMENDATION

This matter is before the Court on the Magistrate Judge's Report and Recommendation filed September 11, 2003 (Doc. 14).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation in a timely manner. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981). As of the date of this Order, no objections have been filed to the Magistrate Judge's Report and Recommendation.

Having reviewed this matter de novo pursuant to 28 U.S.C. § 636, we find the Magistrate Judge's Report and Recommendation to be correct.

Accordingly, **IT IS ORDERED** that the Magistrate Judge's Report is **ADOPTED** as follows:

1) Petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DENIED** with prejudice.

2) A certificate of appealability will not issue with respect to the dismissal on procedural default grounds of the claims for relief alleged in the petition in grounds three, five, six, seven and eight because “jurists of reason would not find it debatable whether this Court is correct in its procedural ruling” as required under the first prong of the two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), which is applicable to procedurally-barred claims.¹ A certificate of appealability also will not issue with respect to petitioner’s claims alleged in grounds one, two and four because for the foregoing reasons, petitioner has failed to make a substantial showing of the denial of a constitutional right remediable in this federal habeas corpus proceeding. *See* 28 U.S.C. § 2253(c); Fed.R.App.P. 22(b).

3) With respect to any application by petitioner for *in forma pauperis*, this Court certifies that pursuant to 28 U.S.C. § 1915(a)(3) an appeal of this Order would not be taken in good faith, and therefore DENIES petitioner leave to appeal *in forma pauperis*. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

SO ORDERED.

Date September 29, 2003

/s Sandra S. Beckwith

Sandra S. Beckwith

United States District Judge

¹Because this Court finds petitioner has not met the first prong of the *Slack* standard, it need not address the second prong of *Slack* as to whether “jurists of reason” would find it debatable whether grounds three, five, six, seven and eight state valid constitutional claims. *See Slack*, 529 U.S. at 484.